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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
7

8 UNITED STATES,

No. C 06-5256 SI

9 Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION TO STAY**

10 v.

11 REAL PROPERTY AND IMPROVEMENTS  
12 LOCATED AT 10 TABLE BLUFF ROAD,  
LOLETA, CA (APN 308-271-026),

13 Defendant.  
14 \_\_\_\_\_/

15 The United States seeks a stay of this civil forfeiture action pursuant to 18 U.S.C. § 981(g).  
16 Hearing on the motion is currently scheduled for March 30, 2007. Pursuant to Civil Local Rule 7-1(b),  
17 the Court determines that this matter is suitable for resolution without oral argument and VACATES  
18 the March 30, 2007 hearing. The case management conference scheduled for March 30, 2007 is also  
19 VACATED. For the reasons set forth below, the Court GRANTS plaintiff's motion to stay pending  
20 resolution of the related criminal investigation. The Court also ORDERS the Government to file status  
21 reports every 60 days detailing the continued need for a stay in this case.  
22

23 **BACKGROUND**

24 The United States has brought this judicial forfeiture action under 21 U.S.C. § 881(a)(7) against  
25 defendant real property located at 10 Table Bluff Road, Loleta, California. Complaint for Forfeiture  
26 ("Complaint") ¶ 1. On or about January 26, 2006, agents from the Federal Bureau of Investigation and  
27 officers from the Humboldt County Drug Task Force executed a search warrant at defendant real  
28 property where the Government reports they seized 1801 live marijuana plants, approximately 25

1 pounds of processed marijuana, approximately one half ounce of concentrated cannabis, \$8,300 in  
 2 United States currency, and other indicia of a marijuana cultivation and distribution operation.  
 3 Complaint ¶ 7. Claimant Joan Hunziker is the owner of defendant real property. *See* Verified Statement  
 4 of Interest. Claimants Citimortgage, Inc. and Citibank, N.A. claim interests in the defendant property  
 5 in the form of mortgage liens. *See* Verified Claim of Interest by Claimants Citimortgage, Inc. and  
 6 Citibank, N.A. ¶¶ 1-2.

7 On November 24, 2006, claimant Joan Hunziker filed an emergency motion asking the Court  
 8 to compel an interlocutory sale of the property. On Dec. 7, 2006, the parties stipulated to the  
 9 interlocutory sale of defendant real property.<sup>1</sup> A real estate broker has been engaged but defendant  
 10 property has not yet been sold. *See* Joint Case Management Conference Statement (“Case Mgmt.  
 11 Stmt.”) at 10 (Docket No. 24). Claimant Hunziker actively disputes the validity of the Government’s  
 12 forfeiture action. Case Mgmt. Stmt. at 8-9.

### 14 LEGAL STANDARD

15 Upon motion of the United States, “the court shall stay the civil forfeiture proceeding if the court  
 16 determines that civil discovery will adversely affect the ability of the Government to conduct a related  
 17 criminal investigation or the prosecution of a related criminal case.”<sup>2</sup> 18 U.S.C. § 981(g)(1). If the  
 18 government requests a stay, it may “submit evidence ex parte in order to avoid disclosing any matter  
 19 that may adversely affect an ongoing criminal investigation or pending criminal trial.” 18 U.S.C. §  
 20 981(g)(5).

21 The terms “related criminal case” and “related criminal investigation,” as used in the statute,  
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23 <sup>1</sup> Because the United States and claimants have already agreed to an interlocutory sale of  
 24 defendant real property, the issuance of a stay will not affect the sale, which may proceed.

25 <sup>2</sup> The court has the option of determining a stay is unnecessary if “a protective order limiting  
 26 discovery would protect the interest of one party without unfairly limiting the ability of the opposing  
 27 party to pursue the civil case.” 18 U.S.C. § 981(g)(3). However, the court may not impose a protective  
 28 order as an alternative to a stay if “the effect of such protective order would be to allow one party to  
 pursue discovery while the other party is substantially unable to do so.” *Id.* Neither party seeks this  
 alternative here.

1 mean

2 an actual prosecution or investigation in progress at the time at which the request for the  
3 stay, or any subsequent motion to lift the stay is made. In determining whether a  
4 criminal case or investigation is ‘related’ to a civil forfeiture proceeding, the court shall  
5 consider the degree of similarity between the parties, witnesses, facts, and circumstances  
6 involved in the two proceedings, without requiring an identity with respect to any one  
7 or more factors.

8 18 U.S.C. § 981(g)(3).

## 9 DISCUSSION

10 In this case, the Government has submitted sealed evidence to support its argument. *See*  
11 Detailed Declaration of Special Agent Thomas Calhoon (Docket No. 34). Although the claimant objects  
12 to the sealed evidence, arguing that it deprives her of any meaningful notice of the reasons for requesting  
13 a stay, as discussed above the plain language of the statute allows the Government to submit such ex  
14 parte evidence. *See* 18 U.S.C. § 981(g)(5); *see also United States v. GAF Fin. Servs.*, 335 F. Supp. 2d  
15 1371, 1373 (D. Fla. 2004) (“though claimants ‘[u]nderstandably object to a procedure that would permit  
16 the filing of ex parte, confidential and sealed declarations in support of a stay,’ the statute allows for the  
17 government to submit evidence in an confidential, ex parte form”) (quoting *United States v. All Funds*  
18 *Deposited in Account No. 200008524845*, 162 F. Supp. 2d 1325, 1330 (D. Wyo. 2001)).

19 The Court has reviewed the sealed evidence and determined that the criminal investigation and  
20 this civil forfeiture case arise out of the same facts and circumstances, and are clearly related. *See* 18  
21 U.S.C. § 981(g)(3); *see also GAF Fin. Servs.*, 335 F. Supp. 2d at 1373. Furthermore, the Court finds  
22 that civil discovery will likely adversely affect the ability of the Government to conduct the related  
23 criminal investigation because it will subject the Government’s criminal investigation to broader and  
24 earlier discovery than would occur in a criminal proceeding. As such, the Court is obligated by the plain  
25 language of the statute to grant the Government’s request for a stay. *See* 18 U.S.C. § 981(g)(1); *see also*  
26 *United States v. All Funds on Deposit in Suntrust Account Number XXXXXXXXX8359, In the Name of*  
27 *Gold and Silver Reserve, Inc.*, 456 F. Supp. 2d 64, 65 (D.D.C. 2006) (“Two things are obvious from this  
28 language: 1) the Government must satisfy the court that civil discovery would adversely affect the


1 criminal case; if so, then 2) the court must grant the stay.”).

2  
3 **CONCLUSION**

4 For the foregoing reasons and for good cause shown, plaintiff’s motion to stay this case is  
5 GRANTED. The Court ORDERS the Government to provide status reports every 60 days on the  
6 continued need for a stay in the case.

7 **IT IS SO ORDERED.**

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9 Dated: March 23, 2007

  
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SUSAN ILLSTON  
United States District Judge